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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,413	12/21/2001	Brent C. Gerberding	S63.2-10234	2504
490	7590	03/02/2005	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A.			BAXTER, JESSICA R	
6109 BLUE CIRCLE DRIVE			ART UNIT	
SUITE 2000			PAPER NUMBER	
MINNETONKA, MN 55343-9185			3731	

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/026,413

Applicant(s)

GERBERDING, BRENT C.

Examiner

Jessica R Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,9-14 and 19-24 is/are rejected.
- 7) ☒ Claim(s) 2,5,6 and 15-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of species a)i, b)i in the reply filed on August 11, 2004 is acknowledged. The traversal is on the ground(s) that the species may be in one embodiment. This is not found persuasive because this separation of species is not clear from the specification. The specification clearly indicates that these are separate species.

The requirement is still deemed proper and is therefore made FINAL.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

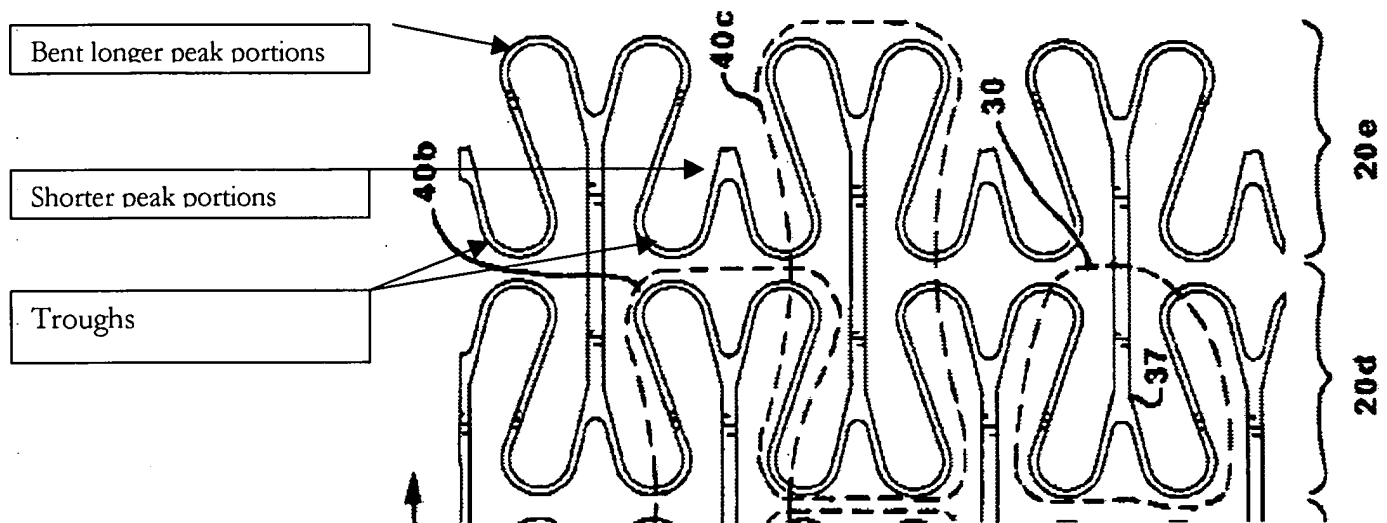
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 4, 9-14, 19, 20 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,935,162 to Dang.

Dang discloses a stent characterized by a longitudinal axis, the stent comprising at least one serpentine band extending about the circumference of the stent and having alternating peak portions and trough portions, the peak portions including shorter peak portions and longer peak portions, the longer peak portions of a longitudinal extent greater than the shorter peak portions, the longer peak portions including first bent peak portions which extend in a first direction non-parallel to the longitudinal axis of the stent and second bent peak portions which

extend in a second direction non-parallel to the longitudinal axis of the stent, each first bent peak portion circumferentially adjacent to one second bent peak portion which points toward the first bent peak portion and to one second bent peak portion which points away from the first bent peak portion, adjacent first and second bent peak portions which point toward one another separated one from the other by at least one shorter peak portion.



### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dang '162 in view of U.S. Patent NO. 5,725,548 to Jayarman et al.

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Dang discloses the claimed invention except for providing the stent with a coating. Jayarman teaches that a stent may be coated with substances to reduce the reaction of blood to the foreign object in the bloodstream (column 2 lines 11-19). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Dang with a coating in order to prevent undesirable responses by the blood that comes into contact with the foreign object.

### *Allowable Subject Matter*

6. Claims 2, 5, 6 and 15-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter  
Examiner  
Art Unit 3731

*jrb*  
jrb

*12*  
ANH TUAN T. NGUYEN  
PRIMARY EXAMINER

*2/24/05*